

REMARKS

This Application has been carefully reviewed in light of the Advisory Action mailed February 27, 2006. In order to advance prosecution of this Application, Claims 1, 2, 4, 5, 8, 10, 11, 13, 16, 18, and 19 have been amended and Claims 3, 12, and 17 have been canceled without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this Application.

The drawings stand objected to under 37 C.F.R. §1.83(a) as not showing every feature of the invention specified in the claims. FIGURE 14 has been amended to show the midsole described in the specification but missing from the drawings. Support for the amendment to the drawings to show the midsole can be found at page, See page 29, lines 11-13, of Applicant's specification. Further support for a midsole can be found at page 22, lines 9-12, of Applicant's specification. The Examiner indicates that the thickness, shape, and exact location of the midsole added to FIGURE 14 is considered to be new matter. Applicant respectfully submits that these features are disclosed in Applicant's specification and no new matter has been added as a result of showing the midsole in the drawings. As cited above, Applicant's specification clearly states that midsoles may be included in the shoe and thus has some thickness, its location may be between an insole and an outsole, and its shape may have substantially planar surfaces. The midsole now shown in FIGURE 14 provides these features. Moreover, midsoles are well known by those of skill in the art as shown in the various prior art documents submitted by Applicant and cited by the Examiner and as taken by the Examiner as Official Notice in the Office Action. No unusual features have been attributed to the midsole provided in FIGURE 14 and described in Applicant's specification.

Therefore, Applicant respectfully submits that the amended drawings are in accordance with 37 C.F.R. §1.83(a).

The Examiner continues to object to the drawings as not showing reference numeral 824 at a substantially halfway point of the shoe. FIGURE 14 has been amended to clearly show that reference numeral 824 coincides with the midpoint of the length of shoe 810 as provided in Applicant's specification at page 29, lines 16-20, therein.

The Examiner has requested a Replacement Sheet correcting the above identified errors. Applicant has provided the Examiner with an appropriate Replacement Sheet pursuant to the Examiner's request. Therefore, Applicant respectfully submits that the drawings are in accordance with 37 C.F.R. §1.83(a).

Claims 2 and 10 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 2 and 10 have been amended to address matters raised by the Examiner. Therefore, Applicant respectfully submits that Claims 2 and 10 are in accordance with 35 U.S.C. §112, second paragraph.

Claims 1, 2, 10, and 11 stand rejected under 35 U.S.C. §102(b) as being anticipated by Lodispoto. Independent Claims 1 and 11 recite in general insole being configured with a constantly thick forward toe section and a decreasingly thick rear heel section. By contrast, the Lodispoto patent does not have an insole with this configuration. Therefore, Applicant respectfully submits that Claims 1, 2, 10, and 11 are not anticipated by the Lodispoto patent.

Claims 1-5 and 10-13 stand rejected under 35 U.S.C. §102(b) as being anticipated by Snabb, et al. Independent Claims 1 and 11 recite in general an insole being configured with a constantly thick forward toe section and a decreasingly thick rear heel section. By contrast, the Snabb, et al. patent does not disclose have an insole with this

configuration. Therefore, Applicant respectfully submits that Claims 1-5 and 10-13 are not anticipated by the Snabb, et al. patent.

Claims 1, 2, 10, 11, 15, 16, and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Robinson. Independent Claims 1, 11, and 16 recite in general an insole being configured with a constantly thick forward toe section and a decreasingly thick rear heel section. By contrast, the Robinson patent does not have an insole with this configuration. Therefore, Applicant respectfully submits that Claims 1, 2, 10, 11, 15, 16, and 20 are not anticipated by the Robinson patent.

Claims 1-5, 8, 10-14, and 16-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Robinson. Claims 3, 12, and 17 have been canceled without prejudice or disclaimer. Claims 1, 2, 10, 11, 15, 16, and 20 have already been shown above to be patentably distinct from the Robinson patent. Independent Claims 1, 11, and 16 require a constantly thick forward toe section and a decreasingly thick rear heel section. By contrast, the Robinson patent has an insole 30 with a constant thickness throughout and is only raised as a result of the reverse wedge 22. The reverse wedge of the Robinson patent increases forwardly in thickness to the wearer's toes before tapering to the end of the shoe. Thus, even incorporating the structure of the reverse wedge of the Robinson patent into an insole would still not provide the structure of these claims. Also, Claims 4, 13, and 18 provide for the forward toe section and the rear heel section to meet at a point halfway with respect to the outsole. The Robinson patent clearly shows that the reverse wedge begins to provide a presence in the heel area of the shoe. Therefore, Applicant respectfully submits that Claims 1, 2, 4, 5, 8, 10, 11, 13,

14, 16, and 18-20 are patentably distinct from the Robinson patent.

Claims 8, 14, and 16-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Snabb, et al. Claim 17 has been canceled without prejudice or disclaimer. Independent Claim 1, from which Claim 8 depends; Independent Claim 11, from which Claim 14 depends; and Independent Claim 16 that includes similar limitations found in Independent Claims 1 and 11 have been shown above to be patentably distinct from the Snabb, et al. patents. Therefore, Applicant respectfully submits that Claims 8, 14, 16, and 18-20 are patentably distinct from the Snabb, et al. patent.

Claims 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Robinson or Snabb, et al. Independent Claim 11, from which Claim 15 depends, has been shown above to be patentably distinct from the Robinson and Snabb, et al. patents. The Examiner has taken Official Notice that it is well known to allow insoles to be removable. Applicant respectfully requests the Examiner to cite a prior art document that supports an ability to remove the type of insole provided by the claimed invention. Therefore, Applicant respectfully submits that Claim 15 is patentably distinct from the Robinson and Snabb, et al. patents.

Claims 1-5, 8, and 10-20 stand rejected under the judicially created doctrine of double patenting over Claims 1-6 of U.S. Patent No. 6,131,315 in view of either Lodispoto, Robinson, or Borgeas. Claims 3, 12, and 17 have been canceled without prejudice or disclaimer. U.S. Patent No. 6,131,315 only provides disclosure through FIGURE 10 and does not include a FIGURE 14 of the elected species or any disclosure associated therewith as provided in Applicant's specification. Thus, the elected species of FIGURE 14 is not disclosed in

U.S. Patent No. 6,131,315. Moreover, Claims 1-6 of U.S. Patent No. 6,131,315 are directed to specific features associated with an outsole of a shoe whereas the claims of the present Application are directed to features associated with an insole of a shoe. The Examiner merely subjectively states that the references clearly suggest the proposed modification without any objective evidence in support thereof. The Examiner has not provided any objective evidence that an insole of U.S. patent No. 6,131,315 could be modified as proposed in view of either Lodispoto, Robinson, or Borgeas in order to be material to the claims of this Application. Therefore, Applicant respectfully submits that the claimed invention is patentably distinct from the Examiner's proposed combination and a Terminal Disclaimer is not necessary in this Application with respect to U.S. Patent No. 6,131,315.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

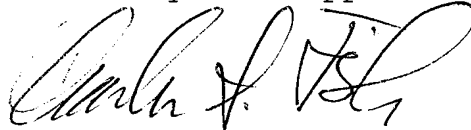
If there are matters that can be discussed by telephone to advance prosecution of this Application, Applicant invites the Examiner to contact the undersigned attorney at the number provided below.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in dark ink, appearing to read 'Charles S. Fish', is written over a horizontal line.

Charles S. Fish

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